

AMENDMENT UNDER 37 C.F.R. § 1.111
Application No.: 10/670,005
Atty Docket No.: Q77667

The Examiner sets forth the various selections that are necessary to arrive at the compound of formula (1-1). These selections, as stated in the Office Action, include Y^{12} being a substituted carbon atom and L^{11} being a 2-phenyl pyrrole.

In reviewing Compound (1-1), however, applicants point out that the definitions for Y^{12} and L^{11} as stated in the Office Action are not correct. In particular, in Compound (1-1), Y^{12} is an unsubstituted carbon, and L^{11} is phenylpyridine.

In Paragraph 6 of the Office Action, the Examiner states that the elected species has been found to be allowable and, therefore, she has expanded the search to cover another species. The Examiner states that in the expanded search, she has selected compounds according to formula (1), wherein R^{11} is substituted, R^{12} is substituted, Y^{11} , Y^{12} and Y^{13} are each substituted carbon atoms, M is cobalt, L is not present, there is no counter ion (X), n^{11} is 2, n^{12} is 0 and n^{13} is 0.

The Examiner states that claims 4-12 and 17-20 have been withdrawn from further consideration as being drawn to a non-elected invention.

Claims 1-3 and 13-16 have been rejected under 35 U.S.C. § 102(b) as anticipated by JP 2000-277262 to Kishimoto et al.

Applicants submit that Kishimoto et al do not disclose or render obvious the subject matter of claims 1 to 3 and 13 to 16 and, accordingly, request withdrawal of this rejection.

The Examiner states that the abstract of Kishimoto et al disclose a porphyrin-type compound. The Examiner states that Kishimoto et al disclose a cobalt metal containing

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porphyrin compound, which reads upon the species being examined. The Examiner particularly refers to paragraphs 30 and 32 and formula [1] in columns 6 and 7 of Kishimoto et al.

The Examiner states that formula (I) of the present claims does not exclude a porphyrinic compound because R^{11} and R^{12} may generally be a substituent. The Examiner asserts that Kishimoto et al, therefore, satisfy the present claim recitations.

Applicants disagree with the Examiner's interpretation of the meaning of claim 1.

In particular, although claim 1 states that R^{11} and R^{12} can be a substituent, claim 1 further includes the "proviso that a compound in which R^{11} and R^{12} are connected to form a porphyrin ring is excluded".

This language excludes porphyrin compounds from formula (1).

Accordingly, applicants submit that Kishimoto et al do not anticipate or render obvious the present claims and, therefore, request withdrawal of this rejection.

Claims 1-3 and 13-16 have been rejected under 35 U.S.C. § 102(b) as anticipated by JP 02-213088 to Ishiko et al.

Applicants submit that Ishiko et al do not disclose or render obvious the subject matter of claims 1 to 3 and 13 to 16 and, accordingly, request withdrawal of this rejection.

The Examiner asserts that Ishiko et al disclose cobalt metal containing porphyrin compounds, which read upon the species that is presently being examined. The Examiner refers to Table 2 at page 456 of Ishiko et al.

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The Examiner again asserts that formula (I) of the present claims does not exclude a porphyrinic compound because R¹¹ and R¹² may generally be a substituent.

Similar to applicants discussion above, claim 1 specifically excludes porphyrin compounds. Accordingly, applicants submit that Ishiko et al do not disclose or render obvious the presently claimed invention and, therefore, request withdrawal of this rejection.

Claims 1-20 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 9, 11, 13, 15 and 17-19 of copending Application No. 10/738,307.

The Examiner asserts that the compounds of formula (II) of the copending application, shown in claims 6 and 13 of the copending application, overlap the compounds of formula (I) of the present claims.

Since this is a provisional double-patenting rejection, applicants defer responding until the copending application matures as a patent.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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